IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Smt. Sayar Kanwar & others Vs. Union of India & others

S.B.CIVIL MISC. APPEAL NO.196/1992
Against the award dated 25.01.1992 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.92/1989

Date of judgment : 04.07.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.J.Gehlot for the appellants
Mr. Dhanesh Saraswat for Mr.Ravi Bhansali for the respondents

BY THE COURT:

This is a claimants' appeal against the award dated 25.01.1992 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.92/1989 seeking enhancement over the amount of compensation of Rs.44,000/- awarded by the Tribunal.

The claim for compensation was made by the appellants on account of death of Shri Kalyan Singh aged 60 years, husband of appellant No.1 and father of appellants No.2 and 3 in a motor accident that occurred on 07.04.1989 near

Mahamandir Circle, Jodhpur when the truck belonging to the respondent No.1 and 2 and driven by respondent No.3 hit the deceased who was going on his bicycle; the deceased sustained several injuries and succumbed to injuries two hours after the accident in hospital. The claimant-appellants submitted that deceased was a retired honorary captain and was getting monthly pension of Rs.1500/- and was further earning Rs.35,000/- per annum from agriculture. The appellants submitted they had suffered loss of contribution to the family estate because of his untimely death and that the pension has been reduced to Rs.850/-. The appellants also claimed compensation towards funeral expenses and loss of consortium and loss of love and affection.

The Tribunal held the accident to have occurred for rash and negligent driving by the respondent No.3. While taking up quantification of compensation, the Tribunal noticed the facts that deceased was getting pension of Rs.1250/- per month and the claimants would now be receiving Rs.850/- per month on that account. Therefore, the loss of income was taken at Rs.400/- per month but then it was observed that deceased was likely to spend about Rs.400/- for himself. The Tribunal also observed that there was not a total loss of agriculture income and, therefore, having regard to all the facts and circumstances of the case including the likelihood of

certain reduction in agriculture income, calculated loss at Rs.3000/-per annum and on the consideration that the deceased was likely to have survived about 5-7 years more, calculated pecuniary loss at Rs.21,000/-. The Tribunal further awarded Rs.18,000/- towards loss of consortium and loss of love and affection and further awarded Rs.5000/- towards transportation and funeral expenses and thereby, in all, awarded an amount of Rs.44,000/- as compensation. The Tribunal awarded interest at the rate of 12% per annum; not from the date of filing of claim application but from the date the evidence was concluded by the claimants.

Learned counsel Mr. J.Gehlot appearing for the appellants has strenuously contended that the claimants have categorically established longevity of life in the family of deceased and on a reasonable estimation, the Tribunal ought to have taken likelihood of the deceased surviving for another ten years and, therefore, the multiplier has not been adopted properly; that the Tribunal has erred in taking the multiplicand at Rs.3000/- per annum only without considering that there is substantial reduction in the agriculture income which the deceased was directly contributing and in view of the set up of the family comprising of old wife of the deceased and one son serving outside, the loss in agriculture income ought to have been assessed properly; that even estimation of expenditure

of Rs.400/- per month by the deceased upon himself is also not correct and in view of the grown up sons and simple habits, deceased was not likely to have spent more than Rs.200/- per month upon himself. Learned counsel further contended that the Tribunal has been seriously in error in awarding interest only from the date of closure of evidence by the claimants and has failed to consider that the claimants have not intentionally delayed the proceedings and had commenced the evidence on 22.01.1990 after framing of issues on 05.10.1989 and in the overall circumstances of the case, there has been no justification for awarding interest only from the date of closure of evidence.

Having given a thoughtful consideration to the submissions made by the learned counsel for the appellants and having scanned through the entire record, this Court is clearly of opinion that no case for any further enhancement in the award is made out and, therefore, the appeal deserves to be dismissed.

The victim was 60 years of age and was getting pension at Rs.1250/- per month and admittedly the loss of pension income has only been of Rs.400/- per month. With two grown up sons, likelihood of the deceased spending substantial amount upon himself cannot be ruled out and in any case the estimation by the Tribunal of likely expenditure

by the deceased at Rs.400/- per month cannot be said to be totally unreasonable. So far agriculture income is concerned, no doubt likelihood of some reduction in the agriculture income cannot be ruled out upon the demise of husband of appellant No.1 and father of the appellants No.2 and 3; but then it cannot be said, and there is no evidence on record to that effect, that the income has drastically been reduced or all the chances of reasonable agriculture income have been obliterated. Having regard to the facts and circumstances of the case, the contribution of the deceased to the development of family estate and loss thereof is required to be calculated with reasonable estimation and the Tribunal cannot be said to be in error in taking such loss at Rs.3000/- per annum, in the range about Rs.250/- per month. The claimants have alleged that deceased was earning about Rs.35,000/- per annum from agriculture. A reasonable estimate has been taken by the Tribunal regarding likelihood of loss of income in view of the income shown by the claimants. Even if for the sake of arguments it be considered that some reasonable enhancement was admissible towards loss of contribution to the estate, the fact remains that deceased was 60 years of age and, therefore, even going by Second Schedule to the Motor Vehicles Act, 1988, reasonable multiplier would be of 5 whereas the Tribunal has adopted a multiplier of 7. In that

view of the matter, the ultimate award made by the Tribunal cannot be said to be unjust and the amount awarded cannot be said to be grossly inadequate.

Learned counsel has contended that the Tribunal has not properly considered the longevity of life. However, the submission does not appear to be well founded. In view of the statement of PW-1 Sayar Kanwar pointing out that her father-in-law i.e. father of deceased had expired at the age of about 60-65 years of age, the estimation by the Tribunal seems to be proper. In any case, as pointed out above, upon calculation by multiplier method, the multiplier would not be available in the present case beyond 5 and in that view of the matter, the amount awarded cannot be said to be unjust so as to warrant interference in appeal.

So far awarding of interest is concerned, it is true that the Tribunal has awarded interest only from 14.10.1991 although the claim application was filed on 08.05.1989 and a look at the order-sheets of the claim case makes out that claimants alone could not have been held responsible for the time spent in evidence and the Tribunal seems to have not been justified in not awarding interest from the date of filing of the application. However, the fact remains that the Tribunal has awarded interest at the rate of 12% per annum and in view of the overall circumstances of the case where the Tribunal

has already awarded reasonable amount towards pecuniary and non-pecuniary losses, this Court is of opinion that deduction of interest for a period of about 2 ½ years has not worked out towards substantial loss to the claimants. In the overall circumstances of the case, the award made by the Tribunal cannot be said to be grossly inadequate so as to warrant interference in appeal.

As a result of the aforesaid, this appeal fails and is, therefore, dismissed. No costs.

(DINESH MAHESHWARI),J.

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